No.

Supreme Court of the United States

October Term, 1971

RICHARD HENRY BERG,

Petitioner,

vs.

CALVIN P. SCHMIDT, as Judge of the Municipal Court of the Orange County Harbor Judicial District, State of California,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Of Counsel

RICHARD P. B. TYSON
234 E. Colorado Blvd., Suite 220
Pasadena, California 91101
Telephone: (213) 681-6894

HARVEY A. SCHNEIDER
8447 Wilshire Blvd., Suite 409
Beverly Hills, California 90211
Telephone: (213) 653-0211

Counsel for Petitioner

Dean-Standefer Company, 322 Main Street, Huntington Beach, California 92648
(714) 536-7161

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. .....

RICHARD HENRY BERG,

Petitioner,

vs.

CALVIN P. SCHMIDT, as Judge of the Municipal Court of the Orange County Harbor Judicial District, State of California,

Respondent.

PETITION FOR WRIT OF CERTIORARI

This is a petition of Richard Henry Berg for writ of certiorari to review the order made by the United States Court of Appeals for the Ninth Circuit on September 24, 1971, denying petitioner's application for a certificate of probable cause, which certificate of probable cause was sought to review the order made by the United States District Court, Central District of California, on July 29, 1971, denying petitioner's Petition for Writ of Habeas Corpus. The United States District Court, Central District

of California, denied petitioner's application for a certificate of probable cause on August 25, 1971.

OPINIONS BELOW

Petitioner's Petition for Writ of Habeas Corpus filed in the California Supreme Court was denied on April 14, 1971, without comment. To petitioner's knowledge, there are no official or unofficial reports of (a) the Order Denying Petition for Writ of Habeas Corpus filed by the United States District Court, Central District of California, on July 29, 1971 (a copy of said order has been attached hereto as Appendix "C" [Appendix p. 3]); (b) the Order Denying Application for Certificate of Probable Cause filed by the United States District Court, Central District of California, on August 25, 1971 (a copy of said order has been attached hereto as Appendix "D" [Appendix p. 4]); or (c) the Order filed by the United States Court of Appeals for the Ninth Circuit on September 24, 1971 (a copy of said order has been attached hereto as Appendix "E" [Appendix p. 5]).

JURISDICTION

1. Petitioner filed a Petition for Writ of Habeas Corpus[1] in the California Supreme Court challenging the condition of probation that is being challenged in this petition. The California Supreme Court denied the Petition for Writ of Habeas Corpus on April 14, 1971.

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1. It is established law in California that a condition of probation may be challenged on appeal from the order granting probation or by habeas corpus. *In re Bushman*, 1 Cal.3d 767, 83 Cal.Rptr. 375.

2. The United States District Court, Central District of California, entered its Order Denying Petition for Writ of Habeas Corpus on July 29, 1971. The United States District Court, Central District of California, denied a certificate of probable cause on August 25, 1971. The Order filed by the United States Court of Appeals for the Ninth Circuit denying petitioner's application for a certificate of probable cause was filed on September 24, 1971.

3. No rehearings were requested relative to the instant case, and no orders were requested granting an extension of time within which to petition for certiorari.

4. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

After pleading guilty to a violation of California Health and Safety Code Section 11530 (possession of marijuana), a misdemeanor, petitioner was placed on probation on certain conditions, one of which conditions required petitioner to "submit to search & seizure and to Nalline and/or urinalysis tests for drugs and narcotics upon request of any officer" (a copy of the docket entry of November 24, 1969, in Case No. F 3637, in the Municipal Court of Newport Beach Judicial District, County of Orange, State of California, setting forth this original condition of probation, has been attached hereto as Appendix "A" [Appendix p. 1]). Subsequently, said condition of probation was modified in the following way: "Defendant ordered to submit his person and property to search and seizure without benefit of warrant, by a peace officer day or night including—but

not limited to—a. residence, b. automobile, c. clothing and personal effects" (a copy of the Amended Probation Order filed in the Municipal Court of Harbor Judicial District, County of Orange, State of California, in Case No. F 3637, has been attached hereto as Appendix "B" [Appendix p. 2]).

The questions presented are:

1. Is the condition of probation as set forth above, both as originally imposed and as modified, unconstitutional and void for the following reasons:

a. Said condition of probation violates the rights guaranteed to petitioner by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, for the reason that petitioner was placed in the position of either accepting said condition of probation and thereby waiving *in futuro* his constitutional right to be free from unreasonable searches and seizures or facing the likely possibility of going to jail;

b. Assuming *arguendo* that said condition of probation is valid, must the search authorized by said condition be interpreted as relating only to the case in which said condition was imposed? In other words, if a search conducted pursuant to said condition of probation revealed contraband, may the discovery of contraband only be used to violate petitioner's probation in the case in which said condition was imposed and, to the contrary, may said condition of probation, consistent with the provisions of the United States Constitution, be construed as a future waiver by petitioner of his search and seizure rights as related to new and different criminal cases?

STATUTES INVOLVED

Amendment IV to the United States Constitution provides in its pertinent parts as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated . . . . "

Amendment V to the United States Constitution provides in pertinent part as follows:

> " . . . nor shall any person . . . be deprived of life, liberty, or property, without due process of law . . . . "

Amendment XIV to the United States Constitution provides in pertinent parts as follows:

> " . . . nor shall any state deprive any person of life, liberty, or property, without due process of law . . . . "

STATEMENT

On or about November 24, 1969, in Case No. F 3637, in the Municipal Court of the Orange County Harbor Judicial District (formerly known as the Newport Beach Judicial District), State of California, petitioner pled guilty to a violation of California Health and Safety Code Section 11530 (a misdemeanor). As a result of said conviction, petitioner was placed on summary probation pursuant to specified conditions, one of which conditions required petitioner to "submit

to search and seizure and to Nalline and/or urinalysis tests for drugs and narcotics upon request of any officer."

On or about October 23, 1970, and November 17, 1970, respectively, police officers of the City of Newport Beach, County of Orange, State of California, conducted searches of petitioner's residence. These searches were conducted solely and exclusively on the basis of the condition of probation that had been imposed on petitioner in Case No. F 3637 as above set forth. At the time of each of said searches the police officers possessed no search or arrest warrant, did not have probable cause to arrest petitioner, and did not have petitioner's consent to search his residence. Absent the condition of probation imposed in Case No. F 3637 as above set forth, said police officers would have had no justification, legal or otherwise, for conducting either of said searches at petitioner's residence.

Since November 17, 1970, petitioner has been subjected to one other search by members of the Newport Beach Police Department, which search was purportedly based upon the condition of probation imposed in Case No. F 3637. Petitioner has every reason to believe that he will be subjected to further searches and seizures of his person and residence based upon no other justification than the condition of probation imposed upon petitioner in said Case No. F 3637.

On June 15, 1971, the above referred to condition of probation was amended to read as follows: "Defendant ordered to submit his person and property to search and seizure without benefit of warrant, by a peace officer day or night including—but not limited to—a residence,

b. automobile, c. clothing and personal effects."

PROCEDURAL BACKGROUND

On or about November 24, 1969, in Case No. F 3637, in the Municipal Court of the Orange County Harbor Judicial District, State of California, petitioner pled guilty to a violation of California Health and Safety Code Section 11530. As a result of said conviction, petitioner was placed on summary probation pursuant to certain specified conditions, one of which conditions required petitioner to "submit to search and seizure and to Nalline and/or urinalysis tests for drugs and narcotics upon request of any officer." Petitioner did not appeal from the judgment imposing said condition of probation. However, both California and federal cases hold that a person does not waive his right to challenge a condition of probation by accepting probation on the terms and conditions imposed by the court. See *Worcester v. C.I.R.*, 370 F.2d 713; *People v. Blakeman*, 170 Cal.App.2d 596, 339 P.2d 202. In *Blakeman*, the court stated:

> "Plaintiff further contends that defendant waived the right to urge the invalidity of the banishment clause [the condition of probation challenged] by suggesting banishment and receiving the benefit of the probation which was conditioned upon banishment: The fallacy of this argument is that we are not dealing with a right or privilege conferred by law upon the litigant for his sole personal benefit. We are concerned with a principle of fundamental

public policy. The law cannot suffer the State's interest and concern in the observance and enforcement of this policy to be thwarted through the guise of waiver of a personal right by an individual. 'Anyone may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.'

" . . . 'Although a defendant may waive rights which exist for his own benefit, he may not waive those which belong also to the public generally.' . . . A defendant may waive formalities established for his protection but not that which is essential to a valid judgment. . . . " (339 P.2d 202, 203.)

See also *People v. Dominguez*, 256 Cal.App.2d 623, 64 Cal. Rptr. 290; *People v. Stanworth*, 71 Cal.2d 820, 80 Cal.Rptr. 49; *In re Bushman*, 1 Cal.3d 767, 83 Cal.Rptr. 375.

After it appeared to petitioner that said condition of probation was going to be used by law enforcement officers to conduct searches of petitioner's person and residence at any time said law enforcement officers, in their unbridled discretion, decided to do so, petitioner filed a Petition for Writ of Habeas Corpus in the California Supreme Court challenging said condition of probation. The California Supreme Court denied the Petition for Writ of Habeas Corpus on April 14, 1971.

Thereafter, petitioner filed a Petition for Writ of Habeas Corpus challenging said condition of probation in the United States District Court, Central District of California. Said Petition for Writ of Habeas Corpus was denied on July 29,

1971, and the District Court entered its Order Denying Application for a Certificate of Probable Cause on August 25, 1971. Thereafter, petitioner applied to the United States Court of Appeals for the Ninth Circuit for a Certificate of Probable Cause, which Certificate of Probable Cause was denied by the Ninth Circuit on September 24, 1971.

Petitioner respectfully submits that both the United States Court of Appeals for the Ninth Circuit and the United States District Court, Central District of California, unjustifiably and arbitrarily denied petitioner's Application for Certificate of Probable Cause. To the extent that the existence of a Certificate of Probable Cause is a prerequisite to this Court assuming jurisdiction of the instant Petition for Writ of Certiorari, petitioner hereby respectfully applies to this Court for a Certificate of Probable Cause. *Cf. Fay Noia,* 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed.2d 837.

ARGUMENT

So far as counsel for petitioner is able to determine, this case presents to this honorable Court for the first time questions which have not been, but should be, settled by this Court. In particular, this case involves the question of whether a court may require a criminal defendant to surrender *in futuro* his constitutional right to be free from unreasonable searches and seizures in exchange for a grant of probation. For the reasons hereafter set forth, it is respectfully submitted that said condition of probation, both as originally imposed and as amended, is unconstitutional and void and should be so declared by this Court. In addition, this Court should

direct respondent to modify its summary probation order by striking therefrom the said condition of probation

It is hardly necessary to be a constitutional law scholar to know that one of the primary evils at which the Fourth Amendment to the United States Constitution was directed was the general warrant. This type of warrant was aptly described by this Court in *Henry v. United States*, 361 U.S. 98, 80 S.Ct. 168, 4 L.Ed.2d 134, in the following way:

> "The requirement of probable cause has roots that are deep in our history. The general warrant, in which the name of the person to be arrested was left blank, and the Writs of Assistance, against which James Otis inveighed, both perpetuated the oppressive practice of allowing the police to arrest and search on suspicion. Police control took the place of judicial control, since no showing of 'probable cause' before a magistrate was required. . . . . " (361 U.S. 98, 100.)

The Fourth Amendment exists for an equally important reason, to wit, to insure the right to privacy of the individual citizen (*Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576) and, absent emergency situations, to assure that, before the individual's right to privacy is violated by searches and seizures conducted by law enforcement officers, the conduct of the law enforcement officers is subjected to judicial scrutiny. This salutary principle of constitutional law was probable best set forth in *McDonald v. United States*, 335 U.S. 451, 65 S.Ct. 191, 93 L.Ed. 15, wherein this Court stated:

> "We are not dealing with formalities. The presence of a search warrant serves a high function. Absent

> some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade the privacy in order to enforce the law. The right of privacy is deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals. Power is a heady thing; and history shows that the police acting on their own cannot be trusted. And so the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home. We cannot be true to that constitutional requirement and excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made that course imperative."

Only recently this Court has had occasion to re-affirm the principles enunciated in *McDonald*. Thus, in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889, the Court stated:

> ". . . We do not retreat from our holdings that the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure . . . or that in most instances failure to comply with the warrant requirement can only be excused by exigent circumstances . . . ." (392 U.S. 1, 20.)

The applicability of the above-stated rules to the instant

case is at once apparent. Thus, it is clear that the condition of probation imposed upon petitioner not only has resulted in petitioner waiving a sacred constitutional right (i.e., the right to be free from unreasonable searches and seizures) *in futuro* but may also result in petitioner being subject to searches of his person and residence at any time by any law enforcement officer without the requirement of warrants, consent or probable cause. Indeed, it may be wondered if there is much difference between this condition of probation and the dreaded general warrant.

When it is also considered that if petitioner had rejected this condition of probation he undoubtedly would have been incarcerated, the true insidiousness of the condition imposed becomes even more apparent. To give a man the choice of being incarcerated or waiving *in futuro* a precious constitutional right is, in fact, to give him no choice at all. At the time petitioner was given the choice of accepting probation on the court's terms or going to jail, there can be no doubt that petitioner's bargaining position was almost non-existent. In effect, the relationship between the court and petitioner was very similar to the relationship between two contracting parties in a situation where one of the contracting parties has a far superior bargaining position than the other. Agreements where one party's bargaining position is far superior to the other are often described as contracts of "adhesion." It is respectfully submitted that the relationship between the court and petitioner at the time the court was about to impose sentence upon petitioner was identical to the relationship of persons involved with a contract of "adhesion." In this connection, the Court's attention is respectfully directed to *Blair v. Pitchess*, 5 Cal.3d 258, wherein the California Supreme

Court stated that a consent obtained in a contract of "adhesion" is not effective to waive a person's constitutional protection against unreasonable searches and seizures.

With respect to the issue here under discussion, the case of *Worcester v. C.I.R.*, 370 F.2d 713, is most pertinent. In *Worcester*, the court had the occasion to pass upon the situation wherein the federal district judge offered to place the defendant on probation if he waived his right of appeal. Even though the defendant accepted the court's terms, the First Circuit Court of Appeals held that it was impermissible for the District Court to condition a grant of probation upon the waiver by the defendant of his right to appeal. In this connection, the First Circuit Court stated:

> "The court was without right to bargain thus with the defendant, or to put a price on an appeal. A defendant's exercise of a right of appeal must be free and unfettered. Just as it is unfair to handicap him because of his poverty (citations omitted), it is unfair to use the great power given to the court to determine sentence to place a defendant in the dilemma of making an unfree choice. . . . It is no answer to say that the defendant need not accept the court's 'offer'. The vice is that vis-a-vis the court he is in an unequal position.
>
> "Were the rule otherwise, we could only too readily envisage the possibilities of abuse. A judge who fears he has committed reversible error during the trial, and does not like the thought of being reversed, informs the defendant that he is considering a

> substantial sentence, but that if the defendant will demonstrate his repentance, or his good citizenship, by waiving appeal, he will suspend it.
>
> " . . . Furthermore, we cannot try the mind of the judge, to assess whether his motives in offering the defendant a valuable consideration to waive appeal (and we can think of little more valuable than not going to jail) were good or bad. To use the power of sentencing to obtain an undertaking to which the court was not entitled would necessarily be a misuse of that power." (370 F.2d 713, 718.)

It is significant to note that in *North Carolina v. Pearce*, 395 U.S. 711, 724, 89 S.Ct. 2072, 23 L.Ed.2d 656, this Court cited with approval and quoted from the decision in *Worcester*, *supra*.

It is conceded by petitioner that the grant of probation is a privilege and not a right. However, it is respectfully submitted that the rule enunciated in *Worcester*, *supra*, is, by analogy, applicable in the instant case. Thus, can it be said that a man who is asked to choose between going to jail or waiving his Fourth Amendment rights (as in the instant case) is faced with any less a "Hobson's Choice" than the man who is asked to choose between going to jail and giving up his right of appeal (as in *Worcester*)?

In this connection, it has become a standard rule of constitutional law that a state may not condition the availability of even a gratuitous benefit upon the waiver of a constitutional right. See, *e.g.*, *Sherbert v. Verner*, 374 U.S. 98, 83 S.Ct. 1790, 10 L.Ed.2d 965; *Frost and Frost Trucking Co. v. Railroad Commission of the State of California*, 274 U.S. 583,

46 S.Ct. 605, 70 L.Ed. 1101.

As if the original condition of probation imposed upon petitioner was not bad enough, as indicated above, the court modified said condition of probation on June 15, 1971. In light of the Amended Probation Order, it may seriously be doubted whether there is anything left of this petitioner's constitutional right to privacy. *Katz v. United States, supra.* Pursuant to the provisions of said Amended Probation Order, it now appears that a search may be conducted of petitioner's person and property at any time of the day or night, with or without a warrant, at the whim and caprice of any peace officer. It is not overstating the case to say that the framers of our Constitution would be horrified to learn that the despised general warrant, for so many years thought dead, has been reincarnated in the Municipal Court of the Orange County Harbor Judicial District in the form of an onerous condition of probation. In this connection, the following language taken from this Court's recent decision in *Coolidge v. New Hampshire*, ... U.S. ....., 91 S.Ct. ....., 29 L.Ed.2d 564, 575, is appropriate.

> " 'It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound

than in substance. It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.'" (29 L.Ed.2d 564, 575.)

In the event this petition is wrongly denominated, it is respectfully prayed that this Court consider the petition as a Petition for Writ of Habeas Corpus.

CONCLUSION

Based on the foregoing, it is respectfully submitted that the condition of probation imposed upon petitioner in Municipal Court Case No. F 3637, both as originally imposed and as amended, is unconstitutional. The attempt by the Municipal Court in said case to remove the magistrate from his position between the police officer and the private citizen and to leave the decision to search the petitioner to the unbridled discretion of a police officer, without probable cause and without warrant, must not be permitted to succeed. It is indeed staggering that the despised general warrant, for so many years thought dead, has been brought back to life in the Orange County Municipal Court in the form of an insidious condition of probation.

Respectfully submitted,

HARVEY A. SCHNEIDER

Attorney for Petitioner

Of Counsel

RICHARD P. B. TYSON

APPENDIX

Page

Appendix "A"
Copy of the order made by the Municipal Court of the Orange County Harbor Judicial District, County of Orange, State of California, on November 24, 1969, imposing the original condition of probation on petitioner 1

Appendix "B"
Copy of the Amended Probation Order as made by the court on June 15, 1971 2

Appendix "C"
Order Denying Petition for Writ of Habeas Corpus entered by the United States District Court, Central District of California, on July 29, 1971 3

Appendix "D"
Order Denying Application for a Certificate of Probable Cause filed by the United States District Court, Central District of California, on August 25, 1971 4

Appendix "E"
Order made by the United States Court of Appeals for the Ninth Circuit on September 24, 1971, denying petitioner's Application for a Certificate of Probable Cause 5

APPENDIX "A"

DOCKET ENTRY OF NOVEMBER 24, 1969

In the Municipal Court of Newport Beach Judicial District, County of Orange, State of California.

No. F 3637

THE PEOPLE OF THE STATE OF CALIFORNIA, vs. RICHARD HENRY BERG.

Nov 24 1969 Cause called for Preliminary Examination. Calvin P. Schmidt, Judge presiding. Both sides ready. People represented by J. Lang, Deputy District Attorney. Defendant in court and represented by R. Tyson, Attorney. Reporter R. Clark present.

Motion of people to strike the word felony and add the word misdemeanor in the fourth line and motion to strike the word feloniously in the eighth line. Motion granted.

Leave of court first obtained defendant now withdraws plea of not guilty heretofore entered and pleads guilty thereto.

Defendant personally waives time for sentence.

The said defendant having been convicted of the offense of 11530 H&S the court now orders . . . that said defendant be placed on summary probation for a period of 3 years upon the following terms and conditions:

1. Violate no law & report in writing immediately to this Court any violation—except parking tickets.

2. Submit to search & seizure and to Nalline and/or urinalysis test for drugs and narcotics upon request of

any officer.

3. Pay $200. + $50 P.A. or serve one day for each $10.00 not paid.

■ ■ ■

APPENDIX "B"

AMENDED PROBATION ORDER

In the Municipal Court of Harbor Judicial District, County of Orange, State of California.

Case No. F 3637

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. RICHARD HENRY BERG, Defendant.

It appearing that on 11-24-69 an Order was made in the above entitled action, placing the above named Defendant on Probation for the term of 3 years, and it appearing to Court that the Order should at this time be amended; IT IS THEREFORE ORDERED THAT condition No. 2 be redefined as follows:

Defendant ordered to submit his person and property to search and seizure without benefit of warrant, by a peace officer day or night including—but not limited to—

a. residence
b. automobile
c. clothing and personal effects.

IT IS FURTHER ORDERED that the original Order, except as hereinabove amended, shall remain in full force and effect.

Dated 6-15-71

CALVIN P. SCHMIDT

Judge.

■ ■ ■

APPENDIX "C"

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

In the United States District Court, Central District of California.

Civil No. 71-1346-CC

RICHARD HENRY BERG, Petitioner, v. CALVIN P. SCHMIDT, ETC., Respondent.

[FILED JULY 29, 1971]

Petitioner seeks a writ of habeas corpus claiming that his amended probation order of the Municipal Court of Orange County contains an invalid provision, namely, that defendant is required to submit his person and property to search and seizure without a warrant by a peace officer, day or night.

Petitioner pleaded guilty to a charge of possession of marihuana which resulted in the probation order.

California Penal Code, Section 1203.1, provides that "The court may impose and require any or all of the above-mentioned terms of imprisonment, * * * and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, * * * and specifically for the reformation and rehabilitation of the probationer * * * ."

California courts have upheld similar conditions of probation and in particular the requirement that a defendant consent to search by a Probation Officer or a Peace Officer. See *People v. Kern*, 71 Cal.Rptr. 105 (1968); *People v. Fitzpatrick*, 84 Cal.Rptr. 78 (1970); *People v. Mason*, 92 Cal.Rptr. 628 (1971).

IT IS, THEREFORE, ORDERED that the petition for a writ of habeas corpus be, and hereby is, denied.

DATED: This 29th day of July 1971.

CHARLES H. CARR
United States District Judge

■ ■ ■

APPENDIX "D"

ORDER DENYING APPLICATION FOR A CERTIFICATE OF PROBABLE CAUSE

In the United States District Court, Central District of California.

Civil No. 71-1346-CC

RICHARD HENRY BERG, Petitioner, v. CALVIN P. SCHMIDT, ETC., Respondent.

[FILED AUGUST 25, 1971]

Petitioner seeks a certificate of probable cause without setting forth any grounds to support such application. Petitioner merely asserts that he has been deprived of "federal constitutional rights."

For the reasons set forth in this court's order filed July 29, 1971, and because it appears that the application is without merit and is frivolous,

IT IS ORDERED that the application for a certificate of probable cause be, and hereby is, denied.

DATED: This 25th day of August 1971.

CHARLES H. CARR
United States District Judge

■ ■ ■

APPENDIX "E"

ORDER

In the United States Court of Appeals, for the Ninth Circuit.

Misc. 5882

RICHARD HENRY BERG, Petitioner, vs. CALVIN P. SCHMIDT, Judge, Municipal Court of the Orange County Harbor Judicial District, State of California, Respondent.

[FILED SEPTEMBER 24, 1971]

Petitioner, a California state parolee, seeks a certificate of probable cause for appeal following adverse orders of the district court entered on July 29, 1971, denying a petition for a writ of habeas corpus and on August 25, 1971, denying an application for a certificate of probable cause.

The application is denied for the reasons expressed by Judge Carr in the above orders.

RICHARD H. CHAMBERS
United States Circuit Judge

• • •

STATE OF CALIFORNIA)
) ss.
County of Orange)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Orange, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 322 Main Street, Huntington Beach, California 92648, that on OCTOBER 22 1971, I served the within PETITION FOR WRIT OF CERTIORARI (RICHARD HENRY BERG v. CALVIN P. SCHMIDT) on the following named parties by depositing the designated copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Huntington Beach, California, addressed to said parties at the addresses as follows:

CLERK, MUNICIPAL COURT OF
HARBOR JUDICIAL DISTRICT
567 WEST EIGHTEENTH STREET
COSTA MESA, CALIFORNIA 92626 [1 copy]

ATTORNEY GENERAL OF THE STATE OF CALIFORNIA
600 STATE BUILDING
LOS ANGELES, CALIFORNIA 90012 [2 copies]

DISTRICT ATTORNEY OF COUNTY OF ORANGE
700 CIVIC CENTER DRIVE WEST
SANTA ANA, CALIFORNIA 92701 [1 copy]

SOLICITOR GENERAL OF THE UNITED STATES
WASHINGTON, D. C. 20543 [3 copies]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on OCTOBER 22nd 1971, at HUNTINGTON BEACH, CALIFORNIA.

D. A. Stapdefer

Dean-STandefer Co., 322 Main St., Huntington Beach, Ca.
(714) 536-7161